



## INTERIOR BOARD OF INDIAN APPEALS

Eastern Band of Cherokee Indians v. Eastern Area Director,  
Bureau of Indian Affairs

22 IBIA 309 (09/23/1992)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

EASTERN BAND OF CHEROKEE	:	Order Affirming Decision
INDIANS,	:	
Appellant	:	
	:	
v.	:	Docket No. IBIA 92-148-A
	:	
EASTERN AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 23, 1992

Appellant Eastern Band of Cherokee Indians seeks review of a March 30, 1992, decision issued by the Eastern Area Director, Bureau of Indian Affairs (Area Director; BIA), denying appellant's application for a FY 1992 Planning Grant. For the reasons discussed below, the Board of Indian Appeals (Board) affirms that decision.

The availability of FY 1992 funds under the Planning Grant Program was announced in the Federal Register on January 2, 1992. 57 FR 160. Appellant submitted an application under the program, seeking funding to

(1) allow the Tribe to upgrade basic planning documents developed during the mid 1970's, to (2) update basic demographic data used in its planning functions and, to (3) conduct a feasibility study on the assumption of program administration of certain Bureau programs at Cherokee under authority of the PL 93-638 [Indian Self-Determination Act] contracting process.

(Grant Application at 1). By letter dated March 30, 1992, the Area Director denied appellant's application. The Area Director listed five basic weaknesses in appellant's application:

1. No evidence that the community was informed of proposal;
2. No resumes or job descriptions for proposed staff, or information on proposed consultation services;
3. Survey plans were identified only in general terms, and future use and benefits of survey results were not identified;
4. No budget narrative to demonstrate that costs associated with grant are reasonable;
5. A very minimum monitoring system or proposed corrective actions, if necessary, (survey programs can be very reasonable to changes and delays).

(Denial Letter at 1). Appellant filed a statement of reasons with its notice of appeal. No other briefs were filed.

The first weakness the Area Director identified in appellant's application is based on section C(2)(a)(i) of the program guidelines. That section provides that an applicant must "[s]urvey or inform its reservation or community population that the tribe wishes to plan, and carry out such plans as [may] be developed, to make significant changes in its programs and its service delivery to Indian beneficiaries."

Appellant contends that, several years before it submitted the application, it held public hearings on several topics. It states that these hearings resulted in Resolution 99-1992, which was attached to its application, and which was passed by the Tribal Council before a live television audience.

The Board has reviewed the copy of Resolution 99-1992 submitted with appellant's application. The resolution refers to the availability of funding and authorizes the Tribal Planning Staff to "perform all work necessary to prepare such an application for planning assistance from the BIA to the Tribe." The resolution meets the requirements of section C(4)(a)(i) of the program guidelines, which require that an application must "[c]ontain a current tribal council resolution which specifically authorizes the preparation of an application for a planning grant." It does not, however, show that appellant met the requirements of section C(2)(a)(i), which requires a showing that the reservation or community population has been surveyed. Appellant does not contend that any other part of its application makes the showing required under section C(2)(a)(i).

Appellant should have included the information in its application that it submitted on appeal. However, in a competitive grant program, the Area Director cannot consider information that was not in the application, because to do so would violate his duty to give fair and equitable consideration to all applicants. Nooksack Indian Tribe v. Deputy Commissioner of Indian Affairs, 21 IBIA 155, 156 (1992); Caddo Indian Tribe of Oklahoma v. Acting Anadarko Area Director, 18 IBIA 63, 65 (1989).

Concerning the Area Director's determination that appellant had not included resumes or job descriptions for proposed staff or information on projected consultation services, appellant argues that the application states that project activities will be performed by present tribal planning staff, whose resumes were included in the application, and that consultation services were defined as two Western Carolina University graduate students and four local undergraduate students who would collect data in the field.

Section C(4)(a)(iv) of the program guidelines provide that an application must

[c]ontain the vitae or resumes of project staff and/or third party technical assistance providers or, if project staff and/or third party technical assistance providers have not been selected, a

description of the qualification and experience necessary for project staff and/or third party technical assistance providers to accomplish the grant objectives.

No present staff resumes were included in appellant's application, despite a statement at page 3 that they were. All three reviewers noted that no resumes were provided. The application states under "Implementation Schedule" at pages 5-6, that "[q]ualifications of survey technicians will consist of high school graduates, preferably college students, seeking part-time employment at the prevailing local hourly rate. Such qualified persons must be skilled in verbal and written communication. They must have a working familiarity with each community in which they will work. Bilingual Cherokee language skills are preferred." Even if this statement were held to meet the requirement for a description of the qualifications and experience necessary for third party technical assistance providers, the fact remains that appellant's application did not include resumes for project staff.

The Area Director's third identified weakness was that survey plans were identified only in general terms, and future uses and benefits of the survey results were not identified. It appears that this determination was based on section C(4)(a)(ii) of the program guidelines, which provides that an application must "[c]ontain a clear statement of the goals and objectives to be achieved through the proposed grant along with the rationale to support the goals and objectives proposed."

Appellant argues that

[t]he substance of the application is clearly enunciated in the second paragraph of the "Introduction" and again stated as tasks numbered 7 through 13 on page 5 of the application. In summary form these task statements are 7) Formulate and recommend new objectives which reflect findings, 8) Analyze contract administration, 9) Develop comprehensive management information system based on data analysis, 10) Update planning documents to reflect fresh data, 11) Develop findings in usable format, 12) Incorporate findings in computer data base, and 13) Develop format to incorporate other agency data.

(Notice of Appeal at page 2; emphasis in original).

Even if the information provided on page 2 of appellant's application, relating to Goals and Objectives is considered in addition to the sections referenced by appellant, the information shows only that appellant wants to collect and update demographic data, and to determine whether it can contract under the Indian Self-Determination Act. Although it can reasonably be assumed that appellant intends to use this information in a variety of ways in its future planning, appellant has failed to show that it did more than identify its plans in general terms, or that its application identified specific ways in which the survey results would be used or incorporated into the tribe's planning process.

The Area Director next found that the application did not contain a budget narrative to demonstrate that costs associated with the grant were reasonable. Section C(4)(a)(v) requires that an application contain "[a] line item budget, with narrative justification, to demonstrate that costs associated with the grant application are reasonable, allowable and allocable to the program in terms of the cost principles found in OMB Circular A-87, Cost Principles for State and Local Governments."

Appellant contends that

Computation of each budget item was provided with clear linkage to objectives and is considered as self-explanatory.

The major budget line item in amount is Consultant Services under Other Costs. These service costs were spelled out in that line item as minimum wage in the case of undergraduate students and as \$4,000 block amounts for two graduate students for 2 months of their technical skill. This level of compensation is considered reasonable from a budget standpoint in any community in this area. The purpose of their services was outlined first at page 3 of the application. All costs were clearly demonstrated as associated with the stated objectives and accepted levels for service and materials procurement.

(Notice of Appeal at 2).

Appellant's application contains a line-item budget summary sheet and a Budget section in its narrative description. The application narrative summary does not, however, provide more than a breakdown of how the budget was formulated. It does not provide the showing required by section C(4)(a)(v).

The Area Director's final identified weakness related to the monitoring system. Section C(5)(a) of the program guidelines provide that "[a] tribe's application for the purpose of planning must clearly outline a monitoring schedule for planning activities and clearly indicate the person(s) responsible for carrying out each of the grant activities."

Under "Evaluation" at page 6 of its application, appellant states:

Project staff, acting as a review committee, will measure the extent and scope of defined deliverables (purposes) with monthly monitoring review of work and will report its findings through periodic progress reports to the Bureau of Indian Affairs Area Office. Identified project deficiencies will be corrected through staff conferences to identify such deficiencies, weigh alternative actions and as necessary reassign responsibilities.

Appellant contends that its "evaluation statement was formulated to reflect the substance and purpose of the application as stated in the objectives and goals of the Tribe. The evaluation by committee was intended to

monitor objective activities on a regular periodic basis and initiate corrective action where appropriate. The application monitoring strategy outlines that purpose" (Notice of Appeal at 3).

Appellant's description of its monitoring system, while providing for monthly reviews, identifies the person or persons responsible for carrying out each of the grant activities only as "project staff." This vague description does not meet the requirement of section C(5)(a) to clearly identify the person or persons responsible for carrying out each of the grant activities.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Eastern Area Director's March 30, 1992, decision is affirmed.

//original signed

Kathryn A. Lynn  
Chief Administrative Judge

//original signed

Anita Vogt  
Administrative Judge